

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

2025.PHHC.129621



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RSA-47-2025(O&M)  
Date of Decision: 16.09.2025

Ram Sanehi and others

...Appellants

Versus

Manohar and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Sarun Hans, Advocate, for  
Mr. Abhinav Sood, Advocate, for the appellants.

**VIKRAM AGGARWAL, J.**

This is defendants' appeal against the judgment and decree dated 02.12.2024 passed by the Additional District Judge, Fatehabad, dismissing the appeal against the judgment and decree dated 18.07.2019 passed by the Court of Civil Judge (Junior Division), Fatehabad, vide which the suit for declaration and permanent injunction filed by the respondents-plaintiffs, was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiffs claimed to be owners in possession of different parcels of land (fully described in the plaint) situated in Village Bhuna, Tehsil Bhuna, District Fatehabad. They sought a declaration to this effect as also to the effect that the order dated 28.02.2013 had been obtained by defendant Nos. 1 to 3 in

collusion with defendant No. 4, vide which defendant Nos. 1 to 3 had been declared as occupancy tenants and owners of the suit land was illegal, void, without jurisdiction and was, therefore, not binding on the rights of the plaintiffs. It was claimed that the resultant mutation No.16302 sanctioned on 31.03.2013 was also liable to be set aside. Consequential relief of permanent injunction restraining defendant Nos. 1 to 3 from interfering in the cultivating possession of the plaintiffs over the suit land and from alienating the said land, was also sought.

4. The order dated 28.02.2013 was assailed on various grounds viz., the addresses of the plaintiffs not having been given in their case No. 149 titled as Ram Sanehi Vs. Gobind Ram etc.; no service having been effected upon them, as required by the provisions of Section 90 of the Punjab Tenancy Act (for short 'the Tenancy Act'); proclamation through newspapers for service, not being envisaged under the Tenancy Act. It was further averred that defendant Nos. 1 to 3 had claimed in their plaint that they and their predecessors, were in cultivating possession of the suit land as *Gair Marusi Tenants* (Non Occupancy Tenants) and, therefore, they could not be considered as occupancy tenants, meaning thereby that the declaration given by defendant No.4 to defendant Nos. 1 to 3 as occupancy tenants and owners of the suit land, was illegal and arbitrary. It was averred that the plaintiffs were reflected to be in exclusive possession as co-sharers of their part of the suit land.

5. It was claimed that the declaration of ownership of having acquired occupancy rights, could not have been given by

the Assistant Collector, Ist Grade, and it was only the Civil Court, which had the jurisdiction to give such declaration.

6. It was averred that the defendants threatened to interfere into the cultivating possession of the plaintiffs over the suit land, whereafter, the plaintiffs obtained the copies of the revenue record and came to know about the order dated 28.02.2013 having been passed. Under the circumstances, the suit was instituted.

7. Defendant Nos. 1 to 3 filed a joint written statement raising certain preliminary objections. It was averred that the plaintiffs had no right to challenge the order dated 28.02.2013 since none of the plaintiffs was a party to the said lis. As regards the land owned and possessed by the plaintiffs, it was averred that the plaintiffs had filed the suit at the asking of some strangers. Objections of cause of action; *locus standi*, maintainability and the plaintiffs having not approached the Court with clean hands etc., were also taken.

8. On merits, it was averred that the answering defendants had impleaded all co-sharers as parties in the case titled as Ram Sanehi Vs. Gobind Ram, by giving their addresses. It was denied that the plaintiffs had not been served. It was averred that the plaintiffs had rightly been proceeded against *ex-parte* vide order dated 28.02.2013 and the same was not in collusion with defendant No.4. Order dated 28.02.2013 was defended and all other averments made in the plaint, were denied.

9. From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiffs are entitled for decree of declaration as prayed for? OPP
2. Whether the plaintiffs are entitled for decree of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in its present form? OPD
4. Whether the plaintiffs have no cause of action or *locus standi* to file the present suit? OPD
5. Whether the plaintiffs have not come to the Court with clean hands and have suppressed material facts from this Court? OPD
6. Whether the plaintiffs are estopped to file the present suit by their own acts and conduct? OPD
7. Relief.”

10. Parties led their respective evidence.

11. Vide judgment and decree dated 18.07.2019, the trial Court decreed the suit. The appeal preferred against the said judgment and decree was dismissed by the first Appellate Court vide judgment and decree dated 02.12.2024, leading to the filing of the instant appeal.

12. I have heard learned counsel for the appellants.

13. Learned counsel for the appellants has strenuously urged that the findings recorded by both Courts are not sustainable. He submits that service had duly been effected upon the plaintiffs and only after the authority concerned was satisfied about the same, were the plaintiffs proceeded against *ex-parte* and the order dated 28.02.2013 was passed.

14. Learned counsel further submits that the suit had not been instituted within the period of limitation, for, the order under challenge had been passed on 28.02.2013, whereas the suit was instituted on 08.07.2016.

15. Learned counsel further submits that even if the order dated 28.02.2013 was void, the same could have been challenged only within the period of limitation and not thereafter.

16. In support of his contentions, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in **State of Punjab and others Vs. Gurdev Singh and Ashok Kumar**, 1991 AIR SC 2219 and **Jitendra Singh Vs. The State of Madhya Pradesh and others**, 2021 SCC Online SC 802, and a coordinate Bench judgment of this Court in **Ram Narain Singh Vs. Gurinder Kaur**, 1997(4) RCR (Civil) 301.

17. I have considered the submissions made by learned counsel for the appellants, but find the same to be devoid of merit.

18. The trial Court examined the revenue record in detail and gave findings as regards the claim of the plaintiffs qua their ownership and possession over the suit land. In the considered opinion of this Court, the said findings are detailed findings not warranting any interference by this Court.

19. As regards validity of order dated 28.02.2013 (Exhibit P.26), it was rightly concluded by both Courts that in view of the law settled by this Court in **Surinder Kumar Vs. V.P. Johar, Financial Commissioner, Haryana**, 2001(4) RCR (Civil) 818; **Shiv Charan Vs. Financial Commissioner, Haryana**, 2004(3) PLR 569 (P&H - FB); **Soni Vs. Kanchan**, 2011(3) PLR 625; **Gram Panchayat Vs. Bal Kishan**, 2010(2) RCR (Civil) 722 and **Kailash Wati Vs. Financial Commissioner, Haryana**, 2016(4) RCR (Civil) 1015, an occupancy tenant can be declared

as owner only by the Civil Court and not by the revenue Court. It was, therefore, rightly found that the revenue Court had passed an order beyond its jurisdiction.

20. Further, it was rightly found that there is no mention of the address of the defendants in the order dated 28.02.2013. Further the summons Exhibits P.20 and P.25 did not bear the address of the defendants therein (present plaintiffs). It is inexplicable as to how without there being any address on the summons, a decision was arrived at that it was not possible to serve the defendants therein and substituted service was required to be resorted to. The trial Court, therefore, rightly decreed the suit and granted the following reliefs:-

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- (a) Plaintiffs No. 1 and 2 are owners of 6 K 8M land being 2/45 share of 144K land (as prayed for);
- (b) Plaintiff No.3 is owner of 1K 17 M land (as prayed for).
- (c) Plaintiff No.4 Rajbala is owner of 1 K 7M land (as prayed for).
- (d) Plaintiff No. 5 Hansraj is owner of 6 K 8 M (as prayed for).
- (e) Plaintiffs No. 1 to 5 are in exclusive possession of land measuring khasra No. 232//24, 25 (as prayed for).
- (f) Plaintiff No. 6 Narsi Ram is co-sharer of 33 K 8 M 6 Sarsai land.
- (g) Ex.P26 is without jurisdiction, null and void and is hereby set aside.”

21. The first Appellate Court examined the matter from the correct perspective and rightly affirmed the findings recorded by the trial Court.

22. As regards the issue of limitation, the same was never raised before the Courts below. However, being a legal issue, it can be raised at any stage. A perusal of the plaint shows that it had been averred that on 02.06.2016, defendant Nos. 1 to 3 had threatened to interfere in the cultivating possession of the plaintiffs over the suit land after which the plaintiffs obtained copies of the revenue record and came to know about the order dated 28.02.2013 having been passed. Under these circumstances, the suit was instituted on 08.07.2016. By no stretch of imagination can it be said that the said suit had been filed beyond the period of limitation, since the limitation period for filing a suit for declaration in terms of Article 58 of the Limitation Act, 1963, would be three years from the time when the right to sue accrues. In terms of Article 59 of the Limitation Act, even a suit to cancel or set aside an instrument or decree, or to rescind a contract, is to be filed within a period of three years from the moment the plaintiff first becomes aware of the facts that entitle him to seek cancellation or rescission.

23. As already noticed, in the present case, shortly after the defendants had threatened to interfere in the possession of the plaintiffs, the suit was instituted. The suit was, therefore, well within limitation.

24. I have gone through the judgments relied upon by learned counsel for the appellants, which primarily deal with the issue of limitation. In view of the above finding on the issue of limitation, the said judgments would not come to the aid of the appellants.

25. In view of the aforementioned facts and circumstances, I do not find any reason to interfere in the impugned judgments and decree. As a consequence, the instant appeal is found to be devoid of merit and is, accordingly, dismissed.

26. Pending application(s), if any, also stands disposed of.

**(VIKRAM AGGARWAL)**  
**JUDGE**

16.09.2025  
ds

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No